

The Employment Act 2008

Should Employers be concerned?

From 6 April 2009 there will be some important changes affecting the vast majority of Employment Tribunal Claims.

Employers will now need to ensure that their internal dispute resolution procedures meet the basic requirements of fairness set out in the new ACAS Code of Practice for Disciplinary and Grievance Procedures.

The Key aspects of the 2008 Act include:

- The Act repeals the Statutory Dismissal and Disciplinary Procedures which set out the mandatory 3 step minimum processes for dealing with workplace disputes.
- The new ACAS Code applies to “disciplinary situations” which includes misconduct and poor performance but excludes dismissals on the grounds of redundancy or non-renewal of a fixed term contract;
- A dismissal will no longer be automatically unfair where there is a procedural breach by the employer. Under the new regime, the question is whether the Employer acted outside the band of reasonable responses in dismissing the employee, taking account of the guidance within the ACAS Code;
- Tribunals will have a discretion to increase or reduce awards by up to 25% in certain cases where either party fails to follow with the new ACAS Code;
- There will no longer be a 3 month extension of the time limit to bring a claim where statutory procedures are ongoing.

The ACAS Code sets the standard of reasonable behaviour stressing that, where Possible, early informal action should be taken to avoid disputes developing.

If disputes can not be resolved informally then the basic principles of fairness should be followed in conducting internal Disciplinary and Grievance procedures.

The Employment Tribunal will take into account the size and resources of the Employer as it may sometimes not be practicable for all Employers to take all of the steps set out in the code.

However Employers should tread carefully to ensure they comply with the ACAS Code and avoid any potential uplift in subsequent Employment Tribunal proceedings. There is no legal obligation to follow the existing 3 step procedures after 5 April but it may be best practice to continue doing so.

Example- An employee emails a complaint to their employer. After 6 April this can initially be dealt with informally to try and resolve the matters raised. If informal action is ineffective then a (step 2) meeting should be arranged to discuss the matter formally. Prior to April 6 the email would have been classed as a step 1 grievance and the formal 3 step grievance procedure would have been invoked immediately.

[Click here to read the new ACAS Code](#)

Employers should note that the existing Statutory Procedures will continue to apply to cases where a Step 1 grievance letter has been received or Step 2 disciplinary meeting has taken place on or before 5 April 2009.

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For further advice and information, please contact Louise Attrup on 01727 735 663 or via email on la@dolegal.co.uk

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